IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

Crl.MC.No. 1801 of 2004(A)

CC.142/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR
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PETITIONER: ACCUSED:

K. UNNIKRISHNAN, KOYIKKARAYAM VEETTIL,
KURABALA MURI, KURABALA VILLAGE.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS: COMPLAINANT:
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1. SUKUMARAN NAIR, VELLAPPARAVILAYIL
VEEDU, KURABALA MURI, KURAMBALA VILLAGE.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.SASIKUMAR
SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 1801 OF 2004

Dated this the 16th day of November 2006

ORDER

The petitioner who is the accused in C.C. 142/2002 in the file of Judicial First Class Magistrate, Adoor with respect to offences under sections 420, 468, 471 of the I.P.C. has sought for setting aside the proceedings alleging that the first respondent/defacto complainant has filed the private complaint which was referred to the police under section 156(3) Cr. P.C, only after he received notice intimating that the cheque issued for Rs. 3.5 lakhs by the first respondent in favour of the petitioner herein got dishonoured. According to the petitioner, the proceedings have been initiated by the first respondent/accused in C.C. No. 479/2001 with respect to offence under section 138 of N.I. Act only to spite him. It is pointed out that the contentions in the private complaint filed are too vague as to the material particulars regarding the date of entrustment of the cheque , the number of cheque etc. According to him, the police filed a final report implicating the petitioner under the influence of the first respondent and in order to protract the proceedings initiated under section 138 of N.I. Act. The

first respondent has contended that he had on receipt of notice issued by the petitioner, sent a reply notice demanding return of documents that happened to be in possession of the petitioner when he was working as Manager of the first respondent. On the expiry of three weeks, the period stipulated in the reply notice, he had filed the private complaint. According to him, cheque has been issued by him when he borrowed Rs. 1,00,000/- from one Mr. T.C. Abraham has been misused by the petitioner inserting an amount of 3.5 lakhs. According to the first respondent he had repaid the amount borrowed to Mr. T.C. Abraham and the document returned by Shri. T.C. Abraham happened to be in the possession of the petitioner in his capacity as Manager.

2. I find that both the complaints have been filed on the same day i.e., 25.05.2001. The case of the petitioner herein that the prosecution allegation in C.C. No. 142/2002 initiated at the instance of the first respondent is absolutely false can only be finally decided only on the basis of the evidence adduced.

In the circumstances I find that the Crl. M.C. filed to quash the proceedings in C.C. No. 142/2003 is not sustainable. All the same the

court below may dispose of both the cases simultaneously by seperate trials if the petitioner/accused is not discharged. The Crl. M.C is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

RV